



2003 Adoption State Statute Series Statute-at-a-Glance Standby Guardianship

What You Need to Know

Every State permits transfer of guardianship authority from a parent to another adult. One of the most recent approaches to transferring custody is facilitated through standby guardian laws. Many States developed these laws to specifically address the needs of families living with HIV or other disabling conditions and terminal illnesses that desire to plan a legally secure future for their children, and approximately¹ 19 States have made statutory provisions for standby guardianships.²

Most standby guardian laws share these provisions:

- A parent may designate a certain person to be guardian for his or her children.
- The guardianship may go into effect during the parent's lifetime and may continue in effect after the parent's death.
- The parent retains much control over the guardianship. He or she may determine when it can begin (although it may commence automatically if the parent becomes seriously ill or mentally incapacitated), and can withdraw the authority if the arrangement does not work to the parent's satisfaction.
- The parent shares decision-making responsibility with the guardian. During the parent's lifetime, the guardian is expected to be in the background, embrace responsibility when needed, and step back when the parent is feeling well.
- The court order for standby guardianship is supported by the authority of a court that has examined facts relevant to the particular family.

Who Can Nominate a Standby Guardian?

Many states allow a parent or legal guardian to nominate a standby guardian regardless of the nominator's health status. However, some States preclude such nomination unless the parent is at significant risk of death or incapacity within a specified time period. Indeed, some States require a documented health status by an attending physician to initiate the court process.



The Clearinghouses are services of the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.

¹ The word *approximately* is used to stress the fact that the statutes are constantly being revised and updated.

² http://www.abanet.org/child/social_workers.doc

How to Establish a Standby Guardian

Standby guardianship is typically established one of two ways: by filing a petition, followed by a court hearing, prior to the event that necessitates standby guardianship (called the "triggering event," see next section) or through a written designation, with a petition prior to the triggering event and a hearing following the event. Many States also provide that a child of a certain age must be notified and that the court must consider the child's preferences. The age requirement varies by State.

How the Standby Guardian's Authority Becomes Activated

A "triggering event" must occur to activate the standby guardian's authority. Typically, States define this event as death, mental incapacity, or physical debilitation, plus parental consent. As mentioned, many States also mandate that an attending physician document such incapacity or debilitation.

Typically, upon a triggering event, the standby has a statutorily prescribed amount of time in which to file confirming documents and/or a petition for approval. Standby guardians must also generally petition for permanent guardianship or initiate custody proceedings within a specified time period.

State statutes vary significantly with respect to activation of the standby guardian's authority and they should be consulted and read carefully.

Involvement of the Non-Custodial Parent

States vary significantly with respect to involvement of the non-custodial parent. Some States require that both parents, if living, consent to standby guardianship. Other States simply require that reasonable efforts be made to locate and serve notice to the non-custodial parent with parental rights. Thereafter, a petition may be filed without consent to the designation.

Relationship Between the Authority of the Parent and the Standby Guardian

The relationship between the authority of the parent and that of the standby guardian varies considerably among States.

Most States provide that once standby guardianship is activated, the standby and parent, while living, have concurrent authority. However, a few States provide that once the guardianship is activated, the standby assumes sole authority. Still other States provide that a standby's authority becomes inactive upon an attending physician's written certification that the parent is restored to health.

Withdrawing Guardianship

States vary on laws regarding withdrawal of standby guardianship and some States that provide for standby guardianship are silent on the issue of withdrawing it. Most States allow for informal oral or written revocation prior to filing the petition or appointment.

After the petition, States generally provide that a written revocation must be filed with the court and that the standby be notified.

The Statutes-at-a-Glance listings summarize specific sections of each State's code. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures. Readers interested in the interpretation of specific statutory provisions within an individual jurisdiction should consult with professionals within the State familiar with the statutes' implementation.

To obtain additional copies of this product, or for more information, contact:

National Adoption Information Clearinghouse
330 C Street, SW
Washington, DC 20447
Phone: (888) 251-0075
E-mail: naic@calib.com
Web: <http://naic.acf.hhs.gov>

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Alabama**Who Can Nominate a Standby Guardian**

Statute: § 26-2A-71 (a)

A parent of an unmarried minor

How to Establish a Standby Guardian

Statute: § 26-2A-71(a); § 26-2A-72

- Written designation in a will or other document
- The court will consider the preference of a child age 14 or older

How Standby Authority is Activated

Statute: § 26-2A-71 (b)

- Filing of acceptance, in court, upon the death or incapacitation of the parent
- Notification to the minor

Involvement of the Noncustodial Parent

Statute: § 26-2A-71 (d)

Notice of acceptance to non-custodial parent who either has no parental rights or adjudged to be incapacitated.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Statute: § 26-2A-72

A child 14 or older may file a petition with the court to prevent appointment of or cause termination of a guardian.

Alaska**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

American Samoa**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Arizona**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Arkansas**Who Can Nominate a Standby Guardian**

Statute: § 28-65-221(a)

Any parent who is chronically ill or near death may nominate.

How to Establish a Standby Guardian

Statute: § 28-65-221(a); § 28-65-204(1); § 28-65-204(2)

- File petition with the court to have a designated guardian appointed
- Written designation in a will or other document
- The court will consider the preference of a child age 14 or older

How Standby Authority is Activated

Statute: § 28-65-221(a)

- The standby shall immediately notify the court and assume guardianship upon the parent's:
 - Death
 - Mental incapacity
 - Physical debilitation (with parental consent)
-

Involvement of the Noncustodial Parent

Statute: § 28-65-204

A parent, "if qualified and suitable," is preferred over all others.

Authority Relationship of the Parent and the Standby

Statute: § 28-65-221(a)

The parent does not surrender parental rights with the appointment of a standby guardian.

Withdrawing Guardianship

Statute: § 28-65-401

Guardianship is terminated upon a minor's death, adoption, emancipation, or attainment of majority or by order of the court.

California**Who Can Nominate a Standby Guardian**

Statute: Prob. Code § 2105

Custodial parent being diagnosed as having a terminal condition, confirmed by a licensed physician.

How to Establish a Standby Guardian

Statute: Prob. Code § 1502

Petition and court hearing to appoint designated joint guardian or signed written statement by parent.

How Standby Authority is Activated

Statute: Prob. Code § 2105; § 1502

- Physician declaration of terminal condition
- As specified in designation

Involvement of the Noncustodial Parent

Statute: Prob. Code § 2105

Appointment of a joint/standby guardian shall not be made over the objections of a non-custodial parent unless it is not in the minor's interest.

Authority Relationship of the Parent and the Standby

Statute: Prob. Code § 2105

Custodial parent and standby guardian will share in the joint care, custody and control of the child.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Colorado**Who Can Nominate a Standby Guardian**

Statute: § 15-14-202(1)

- A parent or guardian may appoint a standby guardian if the parent is likely to become unable to care for child within 2 years.
- The court may confirm the selection of the standby.

How to Establish a Standby Guardian

Statute: § 15-14-202

- Written designation in a will or other document
 - Petition and court hearing to appoint
 - Children 12 or older must be notified and consent to the appointment of a guardian
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How Standby Authority is Activated

Statute: § 15-14-202

- Death, adjudged incapacity, or written certification by a physician that the parent is unable to care for child.
- If petition approved, standby has 30 days from the triggering event to petition for confirmation.
- If only designation in effect, standby has 30 days to file confirming documents and has 30 days within filing notice and appointing instrument to petition for confirmation.

Involvement of the Noncustodial Parent

Statute: § 15-14-204; § 15-14-205

- Consent is required unless either parental rights have been terminated or the parent is unwilling or unable to exercise such rights.
- Notice of hearing and copy of petition must be given to the non-custodial parent.

Authority Relationship of the Parent and the Standby

Statute: § 15-14-202

The appointment of a guardian does not supersede the parental rights of either parent.

Withdrawing Guardianship

Statute: § 15-14-202(1); § 15-14-210

- Parent or guardian may revoke designation anytime before it is confirmed by court.
- Guardianship terminates upon minors death, adoption, emancipation, or attainment of majority, or as ordered by the court.

Connecticut**Who Can Nominate a Standby Guardian**

Statute: § 45a-624

A parent or guardian.

How to Establish a Standby Guardian

Statute: § 45a-624; § 45a-624b

- File written designation with the court
- Designation must be signed and witnessed and a copy provided to the standby guardian
- Form for designation of standby is provided in 45a-624b
- Standby must be provided with copy

How Standby Authority is Activated

Statute: § 45a-624; § 45a-624e

- Effective upon occurrence of a specified contingency, including, but not limited to death, mental incapacity, or physical debilitation.
- If the parent dies, standby has 90 days to petition for permanent guardianship.

Involvement of the Noncustodial Parent

Statute: § 45a-624a

If both parents are alive, both must consent unless either has been removed as guardian or parental rights have been terminated.

Authority Relationship of the Parent and the Standby

Statute: § 45a-624d

Standby's authority ends when contingency no longer exists or after 1 year, whichever is sooner.

Withdrawing Guardianship

Statute: § 45a-624f

Parent may revoke anytime in writing to standby.

Delaware**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

District of Columbia**Who Can Nominate a Standby Guardian**

Statute: § 16-4802

A custodial parent.

How to Establish a Standby Guardian

Statute: § 16-4803; § 16-4807

- File a written designation witnessed by 2 people over 18 years of age, before the triggering event
- Court must approve designation

How Standby Authority is Activated

Statute: § 16-4805(b)(3); § 16-4807

- Standby authority effective upon the occurrence of triggering event including debilitation with written consent, incapacity or death.
- If no court approval prior to triggering event, guardian has 90 days to file for legal custody.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Statute: § 16-4804

The parent retains concurrent authority over the child as his/her health permits.

Withdrawing Guardianship

Statute: § 16-4810

The designator may revoke authority of the guardian by filing a notice of revocation with the court or in writing to the guardian if the designation not effective.

Florida**Who Can Nominate a Standby Guardian**

Statute: § 744.304

Both parents, natural or adoptive, if living, or the surviving parent.

How to Establish a Standby Guardian

Statute: § 744.304; § 744.312(3)(b)

- Upon petition or consent of both parents, the court may appoint a standby guardian
- The court will consider the preference of any child 14 or older

How Standby Authority is Activated

Statute: § 744.304

- Death or adjudication of incapacity of the last surviving parent.
- Upon assumption of duties, standby guardian must petition court within 20 days for confirmation of guardianship.

Involvement of the Noncustodial Parent

Statute: § 744.304

Both parents or the surviving parent must consent.

Authority Relationship of the Parent and the Standby

Statute: § 744.304

After assumption of duties, court shall have jurisdiction over the guardian and ward.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Georgia**Who Can Nominate a Standby Guardian**

Statute: § 29-4-52(a)

A custodial parent upon a health determination.

How to Establish a Standby Guardian

Statute: § 29-4-52(c); § 29-4-4(b)

- File notice with the court within 4 months of the health determination with a copy of designation and health determination attached.
- The court will consider the preference of a child 14 or older.

How Standby Authority is Activated

Statute: § 29-4-52

Authority is activated upon the filing of notice with the court.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Statute: § 29-4-52(b)

The custodial parent maintains the right, health permitting, to confer with the standby in decisions concerning the care and welfare of the minor.

Withdrawing Guardianship

Statute: § 29-4-54

- The custodial parent may revoke at any time by destruction of the designation or by a written revocation
 - Revocation final upon notice to the standby guardian
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Guam**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Hawaii**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Idaho**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Illinois**Who Can Nominate a Standby Guardian**

Statute: § Ch. 755 5/11-5.3

A parent, adoptive parent, adjudicated parent (whose rights have not been terminated), or legal guardian.

How to Establish a Standby Guardian

Statute: § Ch. 755 5/11-5.3; § 5/11-10.1

- Upon petition, the court may appoint a standby guardian.
- May be designated in any writing, including a will.
- Designation must be witnessed by 2 or more persons; optional form available in the statute.
- Children 14 and older must be notified of hearing.
- Standby must take an oath or affirmation to faithfully discharge duties and may be required to file a bond once duties are assumed.

How Standby Authority is Activated

Statute: § Ch. 755 5/11-13.1

- Death, consent, or inability to carry out day-to-day child-care decisions as admitted by the parent or by the attending physician's written certification.
- When the triggering event occurs, the standby has 60 days to file confirming documents and petition for guardianship.

Involvement of the Noncustodial Parent

Statute: § Ch. 755 5/11-5.3

- Designation does not affect rights of non-custodial parent.
- The court has no jurisdiction until non-custodial parent directly/indirectly surrenders parental rights.
- Any living, adoptive, or adjudicated parent with parental rights whose whereabouts are known, must be served notice and given the opportunity to:
 - Assume guardianship.
 - File an objection.

Authority Relationship of the Parent and the Standby

Statute: § Ch. 755 5/11-13.1

Once activated, standby assumes sole authority.

Withdrawing Guardianship

Statute: § Ch. 755 5/11-13(e)

Any interested person may petition the court to limit or revoke the authority of the standby.

Indiana**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Iowa**Who Can Nominate a Standby Guardian**

Statute: § 633.591A

- A parent or legal custodian can nominate a standby guardian
- A person having physical and legal custody of a minor

How to Establish a Standby Guardian

Statute: § 633.560; § 633.591A; § 633.571

- File a verified petition with the court
- The court will consider the preference of a child 14 or older

How Standby Authority is Activated

Statute: § 633.591A; § 633.595

- The petition specifies the triggering event, or condition of physical or mental health, as well as how the triggering event is to be documented.
- Upon triggering event, confirming documents are filed with the court and there is a hearing to appoint standby.

Involvement of the Noncustodial Parent

Statute: § 633.571; § 633.559

A "qualified and suitable" parent is preferred over all others to serve as guardian.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Statute: § 633.594

- Before the petition is filed, the petitioner may destroy the petition or revoke any other acknowledged instrument of revocation.
 - After the petition is filed, the petitioner may file a written revocation with the court.
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Kansas**Who Can Nominate a Standby Guardian**

Statute: § 59-3074

Parent or guardian.

How to Establish a Standby Guardian

Statute: § 59-3074

- File petition
- Appointment is finalized after standby files an oath or affirmation with the court

How Standby Authority is Activated

Statute: § 59-3074

Standby has 10 days after assumption to file written notice with the court stating reason for assumption of duties.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Kentucky**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Louisiana**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Maine**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Maryland**Who Can Nominate a Standby Guardian**

Statute: Est. & Trusts §13-903

- The parent and each person having parental rights over the minor.
- The designation may be made anytime, however, the parent must be at significant risk of death or incapacity within 2 years in order to petition.

How to Establish a Standby Guardian

Statute: Est. & Trusts §13-903; § 13-904

- Petition filed with attending physician's statement of risk to the parent; and court hearing before triggering event.
- Written attested designation before triggering event, followed by a petition and court hearing.
- Optional designation form provided in the statute.

How Standby Authority is Activated

Statute: Est. & Trusts § 13-903; §13-904

- Becomes effective at:
 - Parent's death
 - Parent's incapacity
 - Earlier on written consent of parent
- If the petition is approved, the standby has 90 days from the contingency to file confirming documents
- If only the designation is in effect, the standby has 180 days to petition for appointment

Involvement of the Noncustodial Parent

Statute: Est. & Trusts § 13-903

- Reasonable efforts to locate and serve notice to non-custodial parent with parental rights is required prior to appointment.
- After reasonable efforts have been made, a petition may be filed without consent to designation.

Authority Relationship of the Parent and the Standby

Statute: Est. & Trusts § 13-907

Standby guardian's authority is limited and does not divest the parent of any parental rights.

Withdrawing Guardianship

Statute: Est. & Trusts § 13-903; § 13-904

- Before the petition is filed, notify the standby verbally or in writing.
- After the petition has been granted, parent must file written revocation with court and notify standby.
- Standby may renounce appointment at any time before assuming authority by filing a written renunciation with the court and notifying parent in writing.

Massachusetts**Who Can Nominate a Standby Guardian**

Statute: § Ch. 201 2B

A parent or legal custodian can nominate a standby guardian.

How to Establish a Standby Guardian

Statute: § Ch. 201 2B; 2C

- Petition, written designation (must be witnessed and attested), and court hearing before contingency.
- An affidavit stating parent's consent to designation, willingness and ability to make child care decisions, and future custodial wishes may be submitted with petition.
- A child 14 or older may nominate own guardian, subject to court approval.

How Standby Authority is Activated

Statute: § Ch. 201 2D

- Death or incapacity as certified by a licensed physician, or consent.
- Within 90 days of triggering event, standby must petition court to confirm status and for appointment as guardian.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Statute: § Ch. 201 2D

Once activated, standby and parent, while living, have concurrent authority.

Withdrawing Guardianship

Statute: § Ch. 201 2E

- Before an appointment, notify the standby in writing
- After petition, file written revocation with court and notify all parties

Michigan**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Minnesota**Who Can Nominate a Standby Guardian**

Statute: § 257B.03; § 257B.05

- A parent with legal and physical custody or a legal custodian
- Before triggering event, only a custodian or legal guardian may file. Thereafter a standby guardian may file

How to Establish a Standby Guardian

Statute: § 257B.04; § 257B.05

- Designation in writing
- Approval without a hearing if both parents consent, or there is only one surviving parent
- A hearing is required in other cases
- Designation must identify designator, the children, the standby guardian and triggering events
- Different guardians may be designated for different triggering events
- Optional designation form in the statute

How Standby Authority is Activated

Statute: § 257B.06

- Death, mental incapacity or physical debilitation plus consent.
- Attending physician must document incapacity or debilitation.
- If petition is approved, no further court action is required.
- If only designation in effect, standby has 60 days from triggering event to file confirming documents and petition for approval.
- If parent dies, standby appointed permanent guardian without additional petition.

Involvement of the Noncustodial Parent

Statute: § 257B.03

Consent is required unless whereabouts of the parent are unknown, parental rights have been terminated, or the parent is unwilling and unable to care for the child.

Authority Relationship of the Parent and the Standby

Statute: § 257B.06

- Once activated, standby and parent, while living, have concurrent authority.
- Standby's authority becomes inactive upon attending physician's written certification that parent is restored to health.

Withdrawing Guardianship

Statute: § 257B.07

- Before petition filed, destroy designation and notify standby
 - After petition, file written revocation with the court and notify standby in writing
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Mississippi**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

Missouri**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the StandbyNot addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Montana**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Nebraska**Who Can Nominate a Standby Guardian**

Statute: § 30-2606; § 30-2608

- Parent may name a guardian for a child in a will
- The guardian appointed by will has priority over any guardian appointed by the court
- The court may appoint a standby guardian for a minor whose parent is chronically ill or near death

How to Establish a Standby Guardian

Statute: § 30-2608; § 30-2610

- Petition and court hearing to appoint.
- The court shall appoint a person nominated by a minor age 14 or older, unless the appointment is contrary to the minor's best interests.

How Standby Authority is Activated

Statute: § 30-2608

- Death
- Mental incapacity
- Physical debilitation with consent of surviving parent whose parental rights have not been terminated

Involvement of the Noncustodial Parent

Statute: § 30-2608

- A parent is preferred as guardian
- For a child born out-of-wedlock, the court also considers:
 - Wishes of the deceased parent stated in a will
 - Surviving parent's recognition of paternity, payment of child support, and fitness as a parent

Authority Relationship of the Parent and the Standby

Statute: § 30-2608

An appointment of a guardian does not suspend or terminate a parent's parental rights.

Withdrawing Guardianship

Statute: § 30-2616

- No provision for parent to revoke
 - The court may revoke a guardianship and must approve resignation, after notice and hearing
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Nevada**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

New Hampshire**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing GuardianshipNot addressed in statutes reviewed.

New Jersey

Who Can Nominate a Standby Guardian

Statute: § 3B:12-72

Parent or legal custodian at significant risk of death, incapacity, or debilitation due to a progressively chronic condition or fatal illness.

How to Establish a Standby Guardian

Statute: § 3B:12-72; 74; 77

- Written designation, petition and court hearing to appoint
- A standby guardian may be named in a written designation
- Designation must be witnessed
- Optional designation form in statute
- Children 14 or older must be notified and the court will consider their preference

How Standby Authority is Activated

Statute: § 3B:12-73

- Triggering events:
 - Death
 - Mental incapacity
 - Physical debilitation (with parental consent)
- Attending physician must certify incapacity or debilitation.
- Upon triggering event, standby has 60 days to file confirming documents and petition for confirmation of guardianship.

Involvement of the Noncustodial Parent

Statute: § 3B:12-72

- Notice of hearing must be served to the non-custodial parent who has parental rights, within 30 days of filing the petition.
- The court can proceed after diligent search for the non-custodial parent.
- No notice required to a parent with terminated rights.

Authority Relationship of the Parent and the Standby

Statute: § 3B:12-72

Once activated, standby and parent have shared authority unless otherwise specified.

Withdrawing Guardianship

Statute: § 3B:12-73

- By executing a written revocation that is filed with the court
- An unwritten revocation may be considered if it can be proved by clear and convincing evidence

New Mexico

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

New York**Who Can Nominate a Standby Guardian**

Statute: NY Surr. Ct. Pro. § 1726

- Parent, legal guardian or legal custodian, or primary caretaker when a parent cannot be located
- Petition must state that parent or legal guardian has a progressive chronic or irreversibly fatal illness

How to Establish a Standby Guardian

Statute: NY Surr. Ct. Pro. § 1726; § 1706

- Petition filed and court hearing held before triggering event
- Written designation before triggering event followed by petition and court hearing after
- Optional designation form in statute
- The court will consider the preference of a child age 14 or older

How Standby Authority is Activated

Statute: NY Surr. Ct. Pro. § 1726

- Upon receipt of determination of parent's incapacity or certificate of death, or consent
- Attending physician must document incapacity
- A guardian by petition has 90 days to file confirming documents
- A guardian by written designation has 60 days to file confirming documents and petition for appointment

Involvement of the Noncustodial Parent

Statute: NY Surr. Ct. Pro. § 1705

Notice of hearing required to any parent living in a known residence in NY, unless the parent abandoned the child, is deprived of civil rights, divorced from the custodial parent, incompetent or otherwise judicially deprived of custody of the child.

Authority Relationship of the Parent and the Standby

Statute: NY Surr. Ct. Pro. § 1726

Once activated, standby and parent, while living, have concurrent authority.

Withdrawing Guardianship

Statute: NY Surr. Ct. Pro. § 1726

- After designation, notify verbally, in writing, or by other manner showing intent
 - After petition, file written revocation with court and notify standby
-

North Carolina**Who Can Nominate a Standby Guardian**

Statute: § 35A-1373

A parent or legal guardian must suffer from a progressive chronic or irreversibly fatal illness to petition for the appointment of a standby.

How to Establish a Standby Guardian

Statute: § 35A-1372; § 1373; § 1374

- Petition filed and court hearing before triggering event
- Written designation before triggering event followed by petition and court hearing
- Evidence is required at hearing
- The court may order that children be notified

How Standby Authority is Activated

Statute: § 35A-1373; § 1374

- Death, mental incapacity, physical debilitation plus consent, or consent alone
- Attending physician must document incapacity or debilitation
- Standby must file confirming documents within 90 days of triggering event
- If only designation in effect, standby must also petition for appointment

Involvement of the Noncustodial Parent

Statute: § 35A-1373

- Notice to any biological or adoptive parent is required, along with a copy of the petition
- The court may proceed if there is no complaint within 30 days

Authority Relationship of the Parent and the Standby

Statute: § 35A-1376; § 1377

- Upon recovery and documentation by attending physician, parent's full authority is restored
- Once activated, standby and parent, while living, have concurrent authority

Withdrawing Guardianship

Statute: § 35A-1374

- Revoke the designation, in writing, to standby
 - After petition, file written revocation with court, and provide standby with a copy
-

North Dakota**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Northern Mariana Islands**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Ohio**Who Can Nominate a Standby Guardian**

Statute: § 2111.121

- A parent may nominate a standby guardian regardless of health status
- Any interested party may petition, although a parent's designation carries preference with the court

How to Establish a Standby Guardian

Statute: § 2111.02; § 2111.121

- Durable Power of Attorney or other designating document plus petition and court hearing
- The designating document must be witnessed, attested and notarized
- Standby must attend court hearing and, if appointed, take an oath to fulfill duties
- Children must be notified and court will consider their preference

How Standby Authority is Activated

Statute: § 1337.09

- As specified in the designating document; not limited to disability, incapacity or adjudged incompetence
- As specified in the court order

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Oklahoma**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Oregon**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Pennsylvania**Who Can Nominate a Standby Guardian**

Statute: Title 23 § 5611; § 5612

- A custodial parent, legal custodian or legal guardian may designate a standby guardian
- Before triggering event, only a custodial parent or legal guardian may file
- After the triggering event, a designated standby may file

How to Establish a Standby Guardian

Statute: § Title 23 5611; § 5613

- A petition for court approval of a written designation may be filed at any time
- Optional designation form is provided in the statute
- Different standby guardians may be designated for different triggering events
- A designation may be approved without a court hearing if there is only one parent

How Standby Authority is Activated

Statute: § Title 23 5612; § 5613

- Death, mental incapacity, or physical debilitation with consent.
- Attending physician must document incapacity or debilitation.
- If petition is approved, no further court action is required upon triggering event.
- If only designation in effect, standby has 60 days from triggering event to file confirming documents and petition with the court.

Involvement of the Noncustodial Parent

Statute: § Title 23 5611; 5612

Consent is required unless parent's whereabouts are unknown, parental rights have been terminated, or the parent is unwilling and unable to care for the child.

Authority Relationship of the Parent and the Standby

Statute: § Title 23 5613

- Once activated, standby and parent, while living, have concurrent custody.
- Commencement of a guardianship does not divest a parent of parental rights.
- If a physician certifies the parent has regained capacity, standby's authority becomes inactive until next triggering event.

Withdrawing Guardianship

Statute: § Title 23 5614

- Before petition filed: destroy designation and notify standby
- After: file written revocation with court and notify standby
- Unwritten revocation may be considered by the court if proven by clear and convincing evidence

Puerto Rico**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Rhode Island

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

South Carolina

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

South Dakota

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Tennessee

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Texas

Who Can Nominate a Standby Guardian

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Utah**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Vermont**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Virgin Islands**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

Virginia**Who Can Nominate a Standby Guardian**

Statute: § 63.1-350

- A qualified parent
- Any person, with consent of qualified parent

How to Establish a Standby Guardian

Statute: § 63.1-350; § 63.1-352

- Petition filed and court hearing before triggering event.
- Parent may execute a written designation before triggering event.
- The designation does not have to be filed with court before triggering event, but must be witnessed, and delivered to standby guardian.
- Children 12 or older must be notified of hearing.

How Standby Authority is Activated

Statute: § 63.1-352; § 63.1-353

- Authority of standby is effective upon receipt of:
- Determination of parent's debilitation or incompetence or certificate of death.
- Parent's written consent.
- Standby then has 30 days to file confirming documents, and if only designation in effect, petition court for approval.
- If parent dies, standby has 90 days to petition for permanent guardianship or initiate custody proceedings.

Involvement of the Noncustodial Parent

Statute: § 63.1-350

- Each parent whose identity and whereabouts are known should be notified of the petition.
- Another known parent, stepparent, adult sibling, or other adult related to the child may request a hearing within 10 days.
- Court cannot proceed if a custody case is pending.

Authority Relationship of the Parent and the Standby

Statute: § 63.1-354

- Once activated, standby and parent, while living, have concurrent authority.
- If parent regains health, standby's authority continues unless the parent notifies the court and standby in writing.

Withdrawing Guardianship

Statute: § 63.1-354

- Prior to triggering event, parent may revoke designation by written notice to standby.
- After triggering event, parent must file written revocation with the court and notify standby (and alternate who may be authorized to act).
- Standby may decline to serve by filing a written statement of refusal with the court; copy to the parent.

Washington**Who Can Nominate a Standby Guardian**

Not addressed in statutes reviewed.

How to Establish a Standby Guardian

Not addressed in statutes reviewed.

How Standby Authority is Activated

Not addressed in statutes reviewed.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Not addressed in statutes reviewed.

West Virginia**Who Can Nominate a Standby Guardian**

Statute: § 44A-5-3

A parent, functional parent or any person acting on parent's behalf, may petition for a standby guardian upon occurrence of a specific triggering event

How to Establish a Standby Guardian

Statute: § 44A-5-5; § 44A-5-9

- Petition filed and court hearing before triggering event.
- Written designation before triggering event; petition and court hearing after.
- The designation does not have to be filed with court before triggering event, but must be witnessed and delivered to the standby guardian.
- Children 14 or older must be notified of hearing.
- Medical documentation of parent's status not required.
- Upon filing a petition, all documents are sealed from public inspection.

How Standby Authority is Activated

Statute: § 44A-5-4; § 44A-5-5; § 44A-5-6

- Authority of standby is effective upon receipt of:
 - Determination of parent's debilitation or incompetence or certificate of parent's death
 - Parent's written consent
- Upon triggering event, standby has 30 days to file confirming documents, and if only designation in effect, petition for approval.
- If parent dies, standby has 90 days to petition for permanent guardianship or initiate custody proceedings.

Involvement of the Noncustodial Parent

Statute: § 44A-5-3

- The non-custodial parent is not required to sign the designation.
- Each parent whose identity and whereabouts are known must receive notice and a copy of the petition and he/she has 10 days to request a hearing.
- Court cannot proceed if a custody case is pending.

Authority Relationship of the Parent and the Standby

Statute: § 44A-5-7

- Once activated, standby and parent have concurrent authority
- If parent regains health, standby's authority continues unless specifically revoked

Withdrawing Guardianship

Statute: § 44A-5-7

- Revoke designation via written notice to standby.
- After court approval, file written revocation with court and notice to standby (and to an alternate who may be authorized to act).
- Standby guardian may decline by serving written statement of refusal to the court and parent.

Wisconsin**Who Can Nominate a Standby Guardian**

Statute: § 48.978

A parent who is at significant risk of incapacity, debilitation, or death within 2 years may petition the court to appoint a standby guardian.

How to Establish a Standby Guardian

Statute: § 48.978

- Petition and court hearings before triggering event.
- Written designation (optional form provided in statute) before triggering event with petition and court hearing thereafter.
- Not required to file designation with court prior to triggering event, although the designation document must be witnessed.
- Children 12 and older must be notified and the court will consider their preference.

How Standby Authority is Activated

Statute: § 48.978

- Death, mental incapacity, or physical debilitation; parental consent.
- Attending physician must document incapacity or debilitation.
- If petition approved, standby has 90 days from triggering event to file confirming documents.
- If only designation in effect, standby has 180 days from triggering event to file confirming documents and petition for appointment.

Involvement of the Noncustodial Parent

Statute: § 48.978

- Preference to a willing and able noncustodial parent.
- Reasonable diligence to locate parent and serve notice is required.
- Notice must be made by certified mail or personal service at least 7 days before hearing or by newspaper.
- Consent not required if parent cannot be located or is unwilling or unable to take responsibility for the child.

Authority Relationship of the Parent and the Standby

Statute: § 48.978

- Once activated, standby and parent have concurrent authority
- Parental authority is restored upon written certification of attending physician or revocation

Withdrawing Guardianship

Statute: § 48.978

- Revoke designation verbally, in writing and notify standby, or make a new designation.
- After petition filed, file written revocation with court and standby.

Wyoming

Who Can Nominate a Standby Guardian

Statute: § 3-3-301

- Any parent being of sound mind may nominate a standby guardian
- The court will decide if it is in the child's best interests

How to Establish a Standby Guardian

Statute: § 3-3-303

Designation by filing a petition with any person, firm, bank, or trust company.

How Standby Authority is Activated

Statute: § 3-3-301; § 3-3-305; § 3-3-306

- A specified event or condition of physical or mental health, including how the triggering events are to be documented.
- Upon triggering event, the standby or the parent files the petition and confirming documents with the court.
- The court may appoint designated guardian or schedule hearing to review.

Involvement of the Noncustodial Parent

Not addressed in statutes reviewed.

Authority Relationship of the Parent and the Standby

Not addressed in statutes reviewed.

Withdrawing Guardianship

Statute: § 3-3-304

- Before appointment, parent may revoke by destroying the petition
- Written notification delivered to the depository where the designation is filed